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Attorneys for Defendant
RICKY DALE HENSON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
(HONORABLE LONNY R. SUKO)

UNITED STATES OF AMERICA,)
)
 Plaintiff,) CR-06-2029-LRS
)
vs.) DEFENDANT'S MEMORANDUM IN
)
 SUPPORT OF MOTION TO COMPEL
RICKY DALE HENSON,) GRAND JURY TRANSCRIPTS
)
)
 Defendant.)
)
)

TO: JAMES A. McDEVITT, UNITED STATES ATTORNEY
JAMES P. HAGARTY, ASSISTANT UNITED STATES ATTORNEY

The defendant is charged with being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and possession of a stolen firearm in violation of 18 U.S.C. § 922(j). A pretrial conference is scheduled for April 27, 2006. Trial is set for May 8, 2006.

This motion is based upon the United States Constitution VI Amendment, the Federal Rules of Criminal Procedure, and Judge Leavitt's discovery order. Mr. Henson moves this Court for an order directing the preparation and production of the grand jury testimony of the Government's witnesses. Mr. Henson furthermore requests that the Government be directed to provide the grand jury transcripts in advance

1 of trial.

2 Pursuant to Fed. R. Crim. P. 6(e) (3) (E) (i), the court has the
 3 authority to authorize disclosure of grand jury matters preliminarily to
 4 or in connection with judicial proceedings.¹ Disclosure of grand jury
 5 transcripts in advance of trial is appropriate, as the government has
 6 agreed to provide discovery in this matter on an open file basis.
 7 Clearly, Mr. Henson would be entitled to review grand jury transcripts
 8 pertaining to any witness who testifies at trial or at a pretrial
 9 proceeding. See FRCrP 26.2(a)&(f)(3). Because the government has
 10 agreed, pursuant to Judge Leavitt's discovery order, to treat this
 11 matter as an open file case and disclose witness statements pretrial,
 12 the court should direct that grand jury transcripts be disclosed in
 13 advance of trial. Knowing that grand jury transcripts will be necessary
 14 during trial, the government certainly can be expected to order
 15 production of transcripts as this case nears trial. Under the open file
 16 discovery order, Mr. Henson is entitled to anything in the government's
 17 file that may be introduced at trial. All Mr. Henson is asking for is
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20 ¹The Jencks Act, 18 U.S.C. § 3500, does not apply to
 21 pretrial requests for disclosure of grand jury testimony. In
Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395 (1959),
 22 the Supreme Court construed the Act as inapplicable to grand jury
 transcripts. The Act was subsequently amended in 1970 to include
 23 grand jury testimony as falling within the definition of
 "statement" as used in subsections (b), (c), and (d) of the Act.
 24 However, Congress specifically did not include grand jury
 testimony within the scope of the statements referred to in
 25 subsection (a) of the Act. Subsection (a) of the Jencks Act is
 the only portion of the Act that can be construed as referring to
 26 pretrial requests for disclosure. Accordingly, the rule set
 forth in Pittsburgh Plate Glass still applies to pretrial
 27 requests for grand jury testimony. See United States v. Short,
 671 F.2d 178, 185 (6th Cir. 1982).

1 an order clarifying that he should be provided grand jury transcripts
2 once they come into the government's possession, before trial.

3 Dated: April 17, 2006

4 Respectfully Submitted,

5 s/ Rebecca L. Pennell
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7 Attorney for Ricky Dale Henson
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1 CERTIFICATE OF SERVICE
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I hereby certify that on April 17, 2006, I electronically filed
the Defendant's Memorandum in Support of Motion for Grand Jury
Transcripts with the Clerk of the Court using the CM/ECF System which
will send notification of such filing to the following: James P.
Hagarty, Assistant United States Attorney.

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9
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